



Paper No. 4

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OFFICE OF PETITIONS

In re Application of
Guy Eden
Application No. 09/944,684
Filed: August 31, 2001
Attorney Docket No. SLA 1086

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: DECISION ON PETITION
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This is a decision on the petition under 37 C.F.R. §1.53(e)(2), filed January 22, 2002, to accord the above-identified application a filing date of August 31, 2001, with pages 19 and 20 of the application comprising claims as a part of the original disclosure.

Application papers in the above-identified application were filed on August 31, 2001. However, on October 16, 2001, the Initial Patent Examination Division mailed applicant a "Notice of Omitted Items in a Nonprovisional Application." Applicant was notified that the application papers had been accorded a filing date; however, pages 19 and 20 of the specification appeared to have been omitted.

In response, applicant timely filed the instant petition (certificate of mailing (Monday) December 17, 2001). Applicant contends that pages 19 and 20 as transmitted with the petition were indeed included in the application as mailed to the USPTO and were in fact deposited in the USPTO with the nonprovisional application papers. In evidence thereof, applicant submits *inter alia* a copy of the complete application as originally filed, including pages 19 and 20 as filed; and a copy of their return postcard from the USPTO.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the USPTO on August 31, 2001; 2) it specifically requests acknowledgment of a patent application consisting of "25 pages of specification" and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard. Thus, petitioner has shown that the 25 pages of specification identified on the postcard were among the papers accorded a filing date of August 31, 2001.

The application papers already considered received in the Office on August 31, 2001, were reviewed along with the missing pages of specification submitted on petition. These papers together constitute the items described on the postcard receipt. Petitioner has shown that pp. 19 and 20 of the specification were among the items present in the application on the date of deposit and should be included in the original application papers.

Accordingly, the petition is GRANTED.

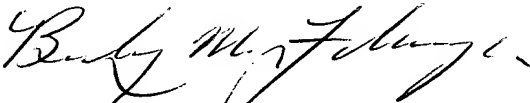
Given the basis for granting the petition, the petition fee is subject to refund. Accordingly, the authorized but not yet debited petition fee, will not be charged to petitioner's Deposit Account.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of August 31, 2001, using the application papers received in the Office and presently accorded that date; and the missing pages of specification, pp. 19 and 20, resubmitted on petition filed January 22, 2002.

Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Nancy Johnson at 703-305-0309.



Beverly M. Flanagan
Supervisory Petitions Examiner
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Office of the Deputy Commissioner
for Patent Examination Policy